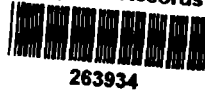


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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

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FILED ASSET  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

150 ACRES OF LAND, More or Less,  
Located in Medina County, Ohio,

Defendant.

Civil Action No. 5:95CV 1009

Judge Solomon Oliver, Jr.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of

response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Bohaty Drum Site in Medina, Medina County, Ohio ("the Site").

B. The United States asserts that Ethel Bohaty, John Vencel Bohaty, Susan Bohaty, Barbara Bohaty, and Belinda Bohaty, owners of the defendant Site and who have appeared as Claimants to the defendant Site in this in rem action ("Settling Claimants"), are jointly and severally liable for all response costs incurred by the United States for activities conducted at the Site, including related indirect, administrative, investigative, and enforcement costs, pursuant to Section 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1), (2).

C. The Settling Claimants -- Ethel Bohaty, John Vencel Bohaty, Susan Bohaty, Barbara Bohaty, and Belinda Bohaty -- who have entered into this Consent Decree on behalf of the defendant Site, deny any liability to the United States arising out of the transactions or occurrences alleged in the complaint.

D. The United States and Settling Claimants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over

Settling Claimants. Settling Claimants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Claimants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Claimants under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday; the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

h. "Parties" shall mean the United States and the Settling Claimants acting on behalf of the defendant Site.

i. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that U.S. EPA or DOJ on behalf of U.S. EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

j. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

k. "Settling Claimants" shall mean Ethel Bohaty, John Vencel Bohaty, Susan Bohaty, Barbara Bohaty, and Belinda Bohaty, owners of the defendant Site.

l. "Site" shall mean the Bohaty Drum Site, encompassing approximately 150 acres, located at 4271 Pearl Road, Medina Township, Medina County, Ohio, and depicted more clearly on the map included in Appendix A, and named as defendant in this action.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

n. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

#### **V. REIMBURSEMENT OF RESPONSE COSTS**

##### **4. Payment of Past Response Costs to the U.S. EPA Hazardous Substance Superfund.**

Settling Claimants shall pay to the U.S. EPA Hazardous Substance Superfund \$100,000.00 in reimbursement of Past Response Costs as set forth below:

a.. Within 30 days after entry of this Consent Decree, Settling Claimants shall pay to the U.S. EPA Hazardous Substance Superfund \$10,000.00. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2000Z00520, the U.S. EPA Region and Site Spill ID Number 05 PN, and DOJ Case Number 90-11-2-1108. Payment shall be made in accordance with instructions provided to Settling Claimants by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Claimants shall send notice to U.S. EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions).

b. Within 5 days after entry of this Consent Decree, the United States and the Settling Claimants shall file a Joint Petition for the Release of Escrowed Funds in City of Medina v. Ethel Ann Bohaty, et al., Case No. 91 CIV 1141 / 55548, in the Court of Common Pleas, Medina County, Ohio, in the form of the Joint Petition attached as Appendix B. The Joint Petition shall seek the release of all escrowed funds directly from the Court of Common Pleas to

the United States, as part of Settling Claimants' reimbursement of the United States' Past Response Costs. Within 5 days of receipt of notice from the Court of Common Pleas that the Joint Petition has been ruled on, Settling Claimants shall notify U.S. EPA and DOJ of the amount disbursed by the Court of Common Pleas and shall provide written proof from the Court of Common Pleas showing the amount and date that payment has been made or that the Joint Petition has been denied, in accordance with Section XI (Notices and Submissions).

c. If the amount of escrowed funds released to the United States in City of Medina v. Ethel Ann Bohaty, et al., Case No. 91 CIV 1141 / 55548, is less than \$90,000.00, or if the Joint Petition for the Release of Escrowed Funds is denied by the Court of Common Pleas, Settling Claimants shall pay to the U.S. EPA Hazardous Substance Superfund the difference between the amount disbursed to the United States and \$90,000.00, within 30 days after the release of the escrowed funds to the United States or the denial of the Joint Petition for the Release of Escrowed Funds. Any payment less than \$10,000.00 shall be made by certified check or cashier's check made payable to "U.S. Department of Justice," referencing the name and address of the party making payment, USAO File Number 2000Z00520, EPA Site/Spill ID Number 05 PN, and DOJ case number 90-11-2-1108. Settling Claimants shall send the check to the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio 44114. Any payment of \$10,000.00 or greater shall be made by EFT in accordance with Paragraph 4.a. above.

#### **VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE**

5. Interest on Late Payments. In the event that any payment[s] required by Paragraph 4.a. or 4.c. (Reimbursement of Response Costs) or Paragraph 6 (Stipulated Penalty) are not

received when due, Interest shall accrue on the unpaid balance from the date of lodging through the date of payment.

6. Stipulated Penalty.

a. If any amounts due to U.S. EPA under Paragraphs 4.a. or 4.c. of this Consent Decree are not paid by the required date, Settling Claimants shall pay to U.S. EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 5, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by U.S. EPA. All payments to U.S. EPA under this Paragraph shall be made by certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund" and shall be sent to:

U.S. EPA  
P.O. Box 70753  
Chicago, IL 60673  
Attn: Superfund Accounting

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the U.S. EPA Region and Site Spill ID Number 05 PN, USAO File Number 2000Z00520, and DOJ Case Number 90-11-2-1108. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to U.S. EPA and DOJ as provided in Section XI (Notices and Submissions).

c. Penalties shall accrue as provided in this Paragraph regardless of whether U.S. EPA has notified Settling Claimants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete

performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

7. If the United States brings an action to enforce this Consent Decree, Settling Claimants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Claimants' failure to comply with the requirements of this Consent Decree.

9. The obligations of Settling Claimants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Claimants to make the payments required under this Consent Decree, the remaining Settling Claimants shall be responsible for such payments.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

## **VII. COVENANT NOT TO SUE BY THE UNITED STATES**

11. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 12 (Reservation of Rights by United States), the United States covenants not to sue Settling Claimants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by U.S. EPA of all



payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraphs 5 (Interest on Late Payments) and 6(a) (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Claimants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Claimants and does not extend to any other person.

12. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 11 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Claimants with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Claimants to meet a requirement of this Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and
- e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

#### **VIII. COVENANT NOT TO SUE BY SETTLING CLAIMANTS**

13. Settling Claimants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

14. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

#### **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

15. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

16. As part of this settlement, it is the intent of the Parties that the funds held in escrow in City of Medina v. Ethel Ann Bohaty, et al., No. 91 CIV 1141/55548 (Court of Common Pleas, Medina County, Ohio) (Cross, J.), shall be paid to the United States in partial satisfaction of the United States' past cost claim and the CERCLA lien filed against the Site on June 1, 1995, with the Medina County Recorder. Settling Claimants expressly agree that the United States is

entitled to receipt of these funds upon entry of this Consent Decree. Following entry of this Consent Decree, within 45 days after receipt by the United States of all payments due from the Settling Claimants under this Decree, including the disbursement of the escrowed funds to the United States, the United States will take all steps necessary to release the June 1, 1995, CERCLA lien attached to the Site.

17. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Claimants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

18. Each Settling Claimant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify U.S. EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Claimant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify U.S. EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Claimant shall notify U.S. EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

19. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Claimants shall not assert, and may not maintain, any defense or claim based upon the principles

of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the United States set forth in Section VII.

#### **X. RETENTION OF RECORDS**

20. Until 5 years after the entry of this Consent Decree, each Settling Claimant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

21. After the conclusion of the document retention period in the preceding paragraph, Settling Claimants shall notify U.S. EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA or DOJ, Settling Claimants shall deliver any such records or documents to U.S. EPA. Settling Claimants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Claimants assert such a privilege, they shall provide the United States with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated

pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only. Settling Claimants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Claimants' favor.

22. By signing this Consent Decree, each Settling Claimant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to U.S. EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Claimant regarding the Site; and

c. fully complied with any and all U.S. EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

## **XI. NOTICES AND SUBMISSIONS**

23. Whenever, under the terms of this Consent Decree, notice is required to be given or a

document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, U.S. EPA, DOJ, and Settling Claimants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice DJ #90-11-2-1108  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to U.S. EPA:

Kathleen Schnieders  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Branch Secretary  
Mail Code SR-6J  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, Illinois 60604

As to Settling Claimants:

David S. Hoffmann  
McMahon, DeGulis, Hoffmann & Blumenthal  
The Caxton Building -- Suite 650  
812 Huron Road  
Cleveland, Ohio 44115  
216/621-1312

## **XII. RETENTION OF JURISDICTION**

24. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

## **XIII. INTEGRATION/APPENDICES**

25. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site; "Appendix B" is the Joint Petition to be filed in the Medina County Court of Common Pleas.

## **XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

26. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Claimants consent to the entry of this Consent Decree without further notice.

27. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

## **XV. EFFECTIVE DATE**

28. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

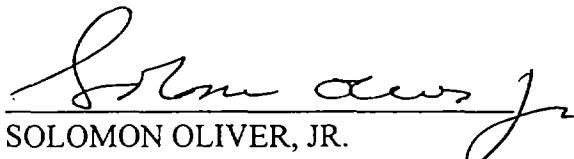
**XVI. SIGNATORIES/SERVICE**

29. Each undersigned representative of a Settling Claimant to this Consent Decree and the Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

30. Each Settling Claimant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Claimants in writing that it no longer supports entry of the Consent Decree.

31. Each Settling Claimant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Claimants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

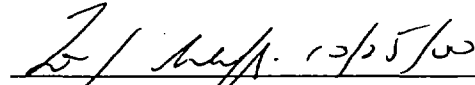
SO ORDERED THIS 4<sup>th</sup> DAY OF Jan., 2000.

  
SOLOMON OLIVER, JR.  
UNITED STATES DISTRICT JUDGE



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. 150 Acres of Land, Civil Action No. 5:95CV 1009, relating to the Bohaty Drum Site.

FOR THE UNITED STATES OF AMERICA



Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

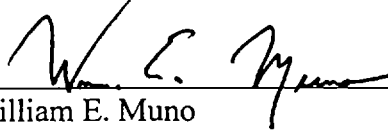


Leslie E. Lehnert  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
202 / 514-1761

Emily M. Sweeney  
United States Attorney  
Northern District of Ohio

Arthur I. Harris  
Assistant United States Attorney  
Northern District of Ohio

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. 150 Acres of Land, Civil Action No. 5:95CV 1009, relating to the Bohaty Drum Site.



William E. Muno  
Director of Superfund Division, Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, Illinois 60604



Kathleen Schnieders  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, Illinois 60604

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. 150 Acres of Land, Civil Action No. 5:95CV 1009, relating to the Bohaty Drum Site.

FOR THE SETTLING CLAIMANTS

(Please type or print, except for  
signature line for Officer)

Date: \_\_\_\_\_

X. John V Bohaty  
Name of Settling Claimant

X. 4271 Pearl Rd  
Medina, Ohio 44256  
Address

X. (330) 722-2671  
Telephone Number

\_\_\_\_\_  
Name of Officer

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Title

If different from above, the following is the name and address of Settling Claimant's agent for service and the name and address of Settling Claimant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

\_\_\_\_\_  
Name

X. David S. Hoff  
Name THE CARTON FOLDING - SUITE 650  
812 HURON RD.  
CLEVELAND, OH 44115

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address  
(216) 621-1312  
Telephone

Each Settling Claimant shall notify the United States Department of Justice of any change in the identity or address of Settling Claimant, its agent for service, or its counsel.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. 150 Acres of Land, Civil Action No. 5:95CV 1009, relating to the Bohaty Drum Site.

FOR THE SETTLING CLAIMANTS

(Please type or print, except for  
signature line for Officer)

Date: \_\_\_\_\_

X Barbara A. Copeland  
Name of Settling Claimant

X 4271 Pearl rd Medina Oh.  
Address

X (330) 722-2671  
Telephone Number

\_\_\_\_\_  
Name of Officer

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Title

If different from above, the following is the name and address of Settling Claimant's agent for service and the name and address of Settling Claimant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

\_\_\_\_\_  
Name

X David S. Hoff  
Name THE CARTON BUILDING - SUITE 650  
812 HURON RD.  
CLEVELAND, OH 44115

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

(216) 621-1312  
Telephone

Each Settling Claimant shall notify the United States Department of Justice of any change in the identity or address of Settling Claimant, its agent for service, or its counsel.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. 150 Acres of Land, Civil Action No. 5:95CV 1009, relating to the Bohaty Drum Site.

FOR THE SETTLING CLAIMANTS

(Please type or print, except for  
signature line for Officer)

Date: 10-11-00

x Belinda L Rudolph

Name of Settling Claimant

x 8819 N. Leroy rd. Westfield Cntr

Address Ohio, 44251

x (330) 881-5614

Telephone Number

Name of Officer

Signature of Officer

Title

If different from above, the following is the name and address of Settling Claimant's agent for service and the name and address of Settling Claimant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Name

THE CAYTON BUILDING-SUITE 650  
812 HURON RD.  
CLEVELAND, OH 44115

Address

Address

(216) 621-1312

Telephone

Each Settling Claimant shall notify the United States Department of Justice of any change in the identity or address of Settling Claimant, its agent for service, or its counsel.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. 150 Acres of Land, Civil Action No. 5:95CV 1009, relating to the Bohaty Drum Site.

FOR THE SETTLING CLAIMANTS

(Please type or print, except for  
signature line for Officer)

Date: 10-11-00

x Susan Evans  
Name of Settling Claimant

x 3589. Georgia Portage Easterly  
Address

x 330-889-0085  
Telephone Number

\_\_\_\_\_  
Name of Officer

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Title

If different from above, the following is the name and address of Settling Claimant's agent for service and the name and address of Settling Claimant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

\_\_\_\_\_  
Name

David S. H.  
Name  
THE CANTON BUILDING - SUITE 650  
812 HURON RD.  
CLEVELAND, OH 44115

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address  
(216) 621-1312  
Telephone

Each Settling Claimant shall notify the United States Department of Justice of any change in the identity or address of Settling Claimant, its agent for service, or its counsel.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. 150 Acres of Land, Civil Action No. 5:95CV 1009, relating to the Bohaty Drum Site.

FOR THE SETTLING CLAIMANTS

(Please type or print, except for  
signature line for Officer)

Date: \_\_\_\_\_

X Mrs Ethel Ann Bohaty  
Name of Settling Claimant

X 4271 Pearl Road  
Address Medina, Ohio 44256

X 330-722-2671  
Telephone Number

\_\_\_\_\_  
Name of Officer

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Title

If different from above, the following is the name and address of Settling Claimant's agent for service and the name and address of Settling Claimant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

\_\_\_\_\_  
Name

X David E. Hoff  
Name

THE CANTON BUILDING - SUITE 650  
812 HURON RD.  
CLEVELAND, OH 44115

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

(216) 621-1312  
Telephone

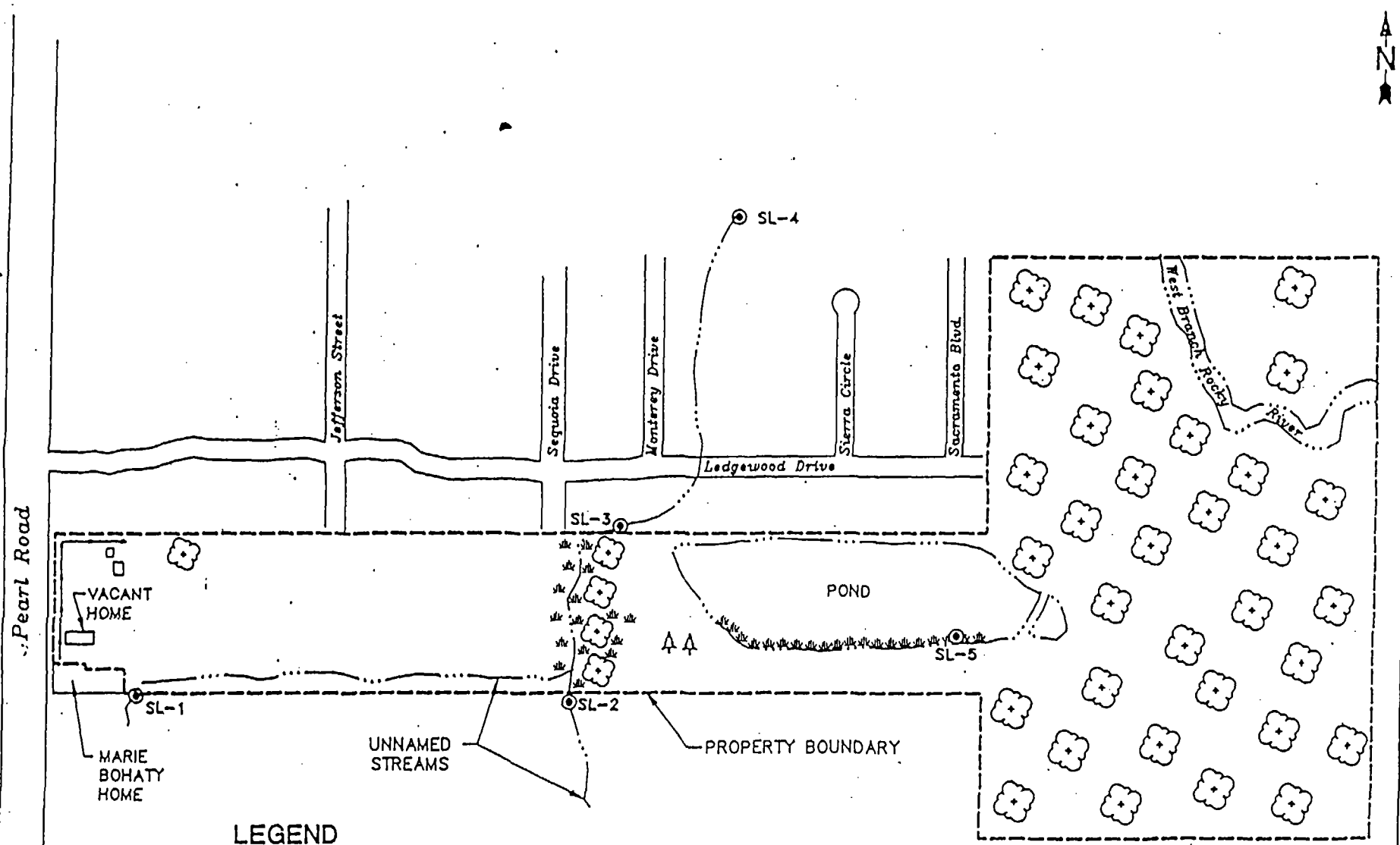
Each Settling Claimant shall notify the United States Department of Justice of any change in the identity or address of Settling Claimant, its agent for service, or its counsel.

# **APPENDIX A**

## **SITE MAP**

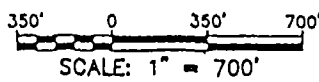


BOHATY DRUM SITE - 08/11/94 - RAO - 020-0029156



LEGEND

- SURFACE WATER AND SEDIMENT SAMPLING LOCATION AND SAMPLE NUMBER
- ☼ WOODED AREA
- ▲ EVERGREEN TREES
- ★ MARSHY AREA



BOHATY DRUM SITE  
MEDINA COUNTY, OHIO

ATTACHMENT A  
APRIL 1992 SURFACE WATER AND  
SEDIMENT SAMPLING LOCATIONS

**PRC** ENVIRONMENTAL MANAGEMENT, INC.

# **APPENDIX B**

## **JOINT PETITION**

IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO

CITY OF MEDINA,	)	CASE NO. 91 CIV 1141
	)	55548
Plaintiff,	)	
	)	
v.	)	JUDGE JUDITH A. CROSS
	)	
ETHEL ANN BOHATY, <u>et al.</u> ,	)	
	)	
Defendants.	)	
	)	

UNITED STATES' AND BOHATYS' JOINT PETITION  
FOR RELEASE OF ESCROWED FUNDS

The United States and the Bohatys (Ethel Ann, Susan, Barbara, Belinda, and John Bohaty) hereby jointly petition this Court for the release of funds held in an interest bearing account following the settlement of the City of Medina's Petition for Appropriation with respect to property owned by the Bohatys. As discussed below, the United States has a valid lien against the property at issue in an amount at least equal to \$100,000 of the funds held in escrow, the United States' lien takes priority over all other existing liens with respect to this property, the United States is entitled to all funds held in escrow, and all escrowed funds should be released to the United States.

In support of this Petition, the United States and the Bohatys state as follows:

1. The City of Medina, Ohio, filed an Amended Complaint Petition for Appropriation on January 31, 1995, in the Court of Common Pleas, Medina County, Ohio, in

order to appropriate certain property for the Reagan Parkway Street Right of Way. The Bohatys (Ethel Ann Bohaty, Susan Bohaty, Barbara Bohaty, Belinda Bohaty, and John Bohaty) and the United States were named as defendants who have or may claim an interest in the property being appropriated.

2. On May 5, 1995, the United States filed, in the United States District Court for the Northern District of Ohio, an in rem action, pursuant to Section 107(I)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(I)(4), against property owned by the Bohaty family, including the property identified in the City of Medina's Amended Complaint Petition, in order to recover the United States' response costs incurred with respect to a CERCLA removal action conducted at the Site in 1992. United States v. the Glidden Company and 150 Acres of Land, More or Less, Located in Medina County, Ohio, 5:95 CV 1009 (N.D. Ohio) (Oliver, J.).

3. Pursuant to CERCLA Section 107(I), 42 U.S.C. § 9607(I), the United States, on behalf of U.S. EPA, filed a lien on June 1, 1995, with the Medina County Recorder's Office, against property owned by the Bohatys, including the property identified in the City of Medina's Amended Complaint Petition, for recovery in rem of response costs incurred by U.S. EPA during the course of the 1992 removal action at the Site. (See Attachment A – copy of lien.)

4. On or about November 6, 1995, the United States, on behalf of all parties to this action, filed a Stipulation that the jury trial scheduled in this matter shall only concern the amount of compensation for the appropriation, that the jury award and any deposit shall not be distributed and priorities shall not be decided until the validity and value of the United States' lien have been established in United States v. the Glidden Company and 150 Acres of Land,

More or Less, Located in Medina County, Ohio, 5:95 CV 1009 (N.D. Ohio) (Oliver, J.), that the question of the validity and value of the United States' lien in this case shall be controlled by the decision in United States v. Glidden, et al., and that the jury award shall be held in an interest bearing account for the benefit of all Defendants pending the outcome of United States v. Glidden, et al., and a ruling on the priority of Defendants' interests.

5. On or about November 27, 1995, when this matter was scheduled for jury trial on the amount of compensation for the appropriation, the City of Medina and the Bohatys appeared before this Court and informed the court that they had reached a settlement agreement in the amount of \$72,000 for the purchase of the permanent highway easement. Pursuant to the settlement agreement, the City of Medina deposited the settlement amount in an interest-bearing escrow account with the clerk of courts. On April 19, 1996, this Court entered judgment enforcing the settlement agreed to by the parties; this Court's judgment was affirmed on March 5, 1997, by the Ohio Court of Appeals, Ninth Judicial District. See City of Medina v. Ethel Ann Bohaty, et al., C.A. No. 2572-M (Ohio Ct. App.) (Mar. 5, 1997).

6. On September 30, 1997, the district court in United States v. Glidden, et al., granted the United States' Motion for Summary Judgment with respect to the liability of the property for the response costs incurred by the United States. The district court determined that the Bohatys were liable persons under CERCLA Section 107(a), 42 U.S.C. § 9607(a), as current owners of the property, and that the property was liable under CERCLA Section 107(l), 42 U.S.C. § 9607(l). The district court determined that the entire property consisting of 150 acres of land, more or less, constituted a single facility and that the United States' lien was not overbroad, that the United States was entitled to recover all its costs incurred at the Site, and that the United

States' actions did not violate the Due Process Clause of the Fifth Amendment. United States v. 150 Acres of Land, 3 F. Supp.2d 823 (N.D. Ohio 1997), aff'd in part, rev'd in part, 204 F.3d 698 (6th Cir. 2000). On January 26, 1998, the district court specifically ordered that the United States' costs that form the basis of the United States' CERCLA lien are \$854,426.87, plus post-judgment interest. See Attachment B – U.S. Dist. Ct. Order. The United States Court of Appeals for the Sixth Circuit reversed the district court's finding that the Bohatys were not innocent landowners; the U.S. Court of Appeals determined that there were issues of fact surrounding the Bohatys' innocent landowner defense that precluded granting summary judgment. The U.S. Court of Appeals affirmed the district court's determinations regarding the breadth of the lien, that the Bohatys received due process, and the value of the United States' lien, to the extent that the Bohatys are liable as owners of the Site. United States v. 150 Acres of Land, 204 F.3d 698, 707-11 (6th Cir. 2000).

7. Following the Sixth Circuit's ruling, the United States and the Bohatys reached a settlement with respect to the United States' past cost claims at the Site in United States v. Glidden, et al. This settlement has been entered by the district court, and a copy of the settlement agreement is attached to this Joint Petition as Attachment C. Pursuant to that settlement agreement, it is the intent of the United States and the Bohatys that the escrowed funds in this action shall be applied towards the total amount due and owing from the Bohatys to the United States with respect to the United States' response costs incurred at the Site.

8. For purposes of this Joint Petition, Defendants Bohatys stipulate to the validity of the U.S. lien and to the value of the lien up to \$100,000.

9. Pursuant to CERCLA Section 107(l)(3), 42 U.S.C. § 9607(l)(3), the United

States' lien takes priority over all other claims except the rights of a purchaser, the holder of a security interest, or a judgment lien creditor whose interest has been perfected under applicable state law before notice of the lien has been filed with the appropriate state or county office in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor is afforded the same protections against the lien as are afforded under state law against a judgment lien that arises out of an unsecured obligation and that arises as of the time of the filing of the notice of the lien.

10. Pursuant to CERCLA Section 107(d)(3), 42 U.S.C. § 9607(d)(3), the United States' lien with respect to the property at issue in this action and the compensation for such property takes priority with respect to all other claims against this property and the compensation for such property.

11. The Clerk of the Court should be directed by this Court to release the escrowed funds to the United States. Payment to the United States should be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2000Z00520, the U.S. EPA Region and Site Spill ID Number 05 PN, and DOJ Case Number 90-11-2-1108, in accordance with instructions provided to the Clerk of the Court by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Ohio following this Court's entry of this Joint Petition. Alternatively, the Clerk of the Court may make payment by certified check or cashier's check made payable to "U.S. Department of Justice," referencing the name and address of the party making payment, USAO File Number 2000Z00520, EPA Site/Spill ID Number 05 PN, and DOJ case number 90-11-2-1108. The Clerk of the Court shall send the check to the Financial Litigation Unit of the

U.S. Attorney's Office for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio 44114.

Wherefore, the United States and the Bohatys respectfully request this court to grant this Joint Petition and order the release of the escrowed funds to the United States in partial satisfaction of the settlement amount due and owing to the United States from the Bohatys in resolution of the United States' past cost claim at the Site.

Respectfully submitted,

For the Bohatys:

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& Blumenthal  
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Cleveland, Ohio 44115  
216/621-1312

For the United States:

Lois J. Schiffer  
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U.S. Department of Justice

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Emily M. Sweeney  
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Northern District of Ohio

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Arthur I. Harris  
Assistant United States Attorney  
Northern District of Ohio



U.S. ENVIRONMENTAL  
PROTECTION AGENCY

WASHINGTON, D.C.

20540

COUNSEL